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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11	RICHARD RODRIGUEZ,)	Case No. CV 15-01109 DDP (PJWx)
12	Plaintiff,)	
13	v.)	ORDER GRANTING DEFENDANT'S MOTION
14	FEDERAL EXPRESS CORPORATION,)	TO DISMISS
15	Defendants.)	[Dkt. 24]
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Presently before the court is Defendant Federal Express Corporation ("FedEx")'s Motion to Dismiss. Having considered the submissions of the parties, the court grants the motion and adopts the following Order.

I. Background

In 2011, Plaintiff was employed as an Aviation Maintenance Technician at a FedEx facility at LAX airport. (First Amended Complaint ("FAC") ¶ 7.) In November 2011, Plaintiff asked FedEx to contact the Federal Aviation Administration in regard to what Plaintiff believed to be certain maintenance deficiencies regarding a "Banjo Fitting" repair. (Id. ¶ 10.) Plaintiff told management that several mistakes had been made on the repair and he did not

1 want responsibility for it. (Id. ¶ 11.) Plaintiff refused to make
2 the repair because he would not be able to later represent that the
3 repair job was adequate. (Id. ¶ 12.)

4 The FAC alleges that FedEx managers then began disparaging and
5 harassing Plaintiff and retaliating against him. (Id. ¶ 13, 15.)
6 After raising a concern about retaliation, Plaintiff was given an
7 unpleasant work assignment usually reserved for outside vendors.
8 (Id. ¶ 15.) Plaintiff alleges that in February 2012 he was falsely
9 accused of insubordination and harassment, and was later terminated
10 on December 28, 2012 for lack of progress on work assignments when,
11 in reality, he was waiting for inspections to be completed. (Id.
12 ¶¶ 16, 18.)

13 Plaintiff filed suit in state court alleging a single cause of
14 action for retaliation of public policy in violation of California
15 Labor Code Section 1102.5. FedEx removed to this court and moved
16 to dismiss. This court granted the motion with leave to amend,
17 noting that Plaintiff conceded that he alleged no claim under Labor
18 Code Section 1102.5(b) and had not alleged facts to support a claim
19 under either Section 1102.5(a) or (c).¹ (Dkt. 20.) Plaintiff
20 filed the FAC, and FedEx once again moves to dismiss.

21 **II. Legal Standard**

22 A complaint will survive a motion to dismiss when it contains
23 "sufficient factual matter, accepted as true, to state a claim to
24 relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.

25
26 ¹ The applicable version of subsection (a) prohibits employers
27 from discouraging employees from disclosing to government agencies
28 information the employees reasonable believe to disclose a
violation of a state or federal law, while subsection (c) prohibits
retaliation against an employee who refuses to participate in a
violation of state or federal law. Cal. Labor Code § 1102.5.

1 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544,
2 570 (2007)). When considering a Rule 12(b)(6) motion, a court must
3 "accept as true all allegations of material fact and must construe
4 those facts in the light most favorable to the plaintiff." Resnick
5 v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). Although a complaint
6 need not include "detailed factual allegations," it must offer
7 "more than an unadorned, the-defendant-unlawfully-harmed-me
8 accusation." Iqbal, 556 U.S. at 678. Conclusory allegations or
9 allegations that are no more than a statement of a legal conclusion
10 "are not entitled to the assumption of truth." Id. at 679. In
11 other words, a pleading that merely offers "labels and
12 conclusions," a "formulaic recitation of the elements," or "naked
13 assertions" will not be sufficient to state a claim upon which
14 relief can be granted. Id. at 678 (citations and internal
15 quotation marks omitted).

16 "When there are well-pleaded factual allegations, a court should
17 assume their veracity and then determine whether they plausibly
18 give rise to an entitlement of relief." Id. at 679. Plaintiffs
19 must allege "plausible grounds to infer" that their claims rise
20 "above the speculative level." Twombly, 550 U.S. at 555.

21 "Determining whether a complaint states a plausible claim for
22 relief" is a "context-specific task that requires the reviewing
23 court to draw on its judicial experience and common sense." Iqbal,
24 556 U.S. at 679.

25 **III. Discussion**

26 Defendant first argues that Plaintiff should be collaterally
27 estopped from bringing this action because the same claim has
28 already been adjudicated in an administrative proceeding.

1 "Collateral estoppel precludes relitigation of both issues of law
2 and issues of fact if those issues were conclusively determined in
3 a prior action. The purpose of the collateral estoppel doctrine is
4 to preclude parties from contesting matters that they have had a
5 full and fair opportunity to litigate." Blum v. KPMG LLP, No. SACV
6 11-01885-CJC, 2012 WL 8704117 at *4 (internal quotations and
7 citations omitted). In Murray v. Alaska Airlines, Inc., 50 Cal.
8 4th 860 (2010), the California Supreme Court, upon certification of
9 the question from the Ninth Circuit, addressed whether a final
10 decision on an administrative complaint filed under the Wendell H.
11 Ford Aviation Investment and Reform Act for the 21st Century ("AIR
12 21") precluded a subsequent state court suit under Labor Code
13 Section 1102.5. The court held that an AIR-21 proceeding satisfied
14 all of the prerequisites necessary to establish preclusive effect,
15 even where the complainant failed to avail himself of all available
16 opportunities to be heard. Murray, 50 Cal. 4th at 868-69, 877-79.

17 Plaintiff here, like the plaintiff in Murray, filed a
18 complaint under AIR21. (RJN II, Ex. A.) Plaintiff's AIR21
19 complaint alleged that FedEx retaliated against him "for reporting
20 air safety issues at FedEx Express." (Dkt. 13, RJN I, Ex. 1 at 1.)
21 The administrative law judge determined that "several disciplinary
22 actions from January-February 2012 until [Plaintiff's] eventual
23 termination on or about December 28, 2012" were not related to any
24 protected activity. (Id.) The ALJ later dismissed the case with
25 prejudice. (RJN I, Ex. 2.)

26 Plaintiff's only argument against collateral estoppel is that
27 his AIR21 complaint concerned different factual issues from those
28 in this case because his AIR21 complaint was about "retaliation for

1 reporting air safety issues at FedEx" while the FAC here concerns
 2 "whether Plaintiff was retaliated against for refusing to engage in
 3 illegal activities." (Opposition at 9.) Even putting aside the
 4 question whether there is any difference to that distinction,
 5 Plaintiff's argument is at odds with the AIR21 complaint itself,
 6 which alleged that Plaintiff was harassed and terminated "in
 7 retaliation for reporting unsafe aircraft maintenance and refusing
 8 to conduct aircraft maintenance without proper documentation . . .
 9 ." (RJN II, Ex. 1 at 4 (emphasis added).) The FAC, therefore,
 10 does not concern any facts that were not already considered, and
 11 rejected, by the ALJ in the AIR21 proceeding. Plaintiff is
 12 therefore collaterally estopped from re-raising those issues here.²

13 **IV. Conclusion**

14 For the reasons stated above, Defendants' Motion to Dismiss is
 15 GRANTED. The FAC is DISMISSED, with prejudice.

16
 17 IT IS SO ORDERED.

18
 19 Dated: February 2, 2016



20 DEAN D. PREGERSON

21 United States District Judge
 22

23 ² The court need not, therefore, address the sufficiency of
 24 Plaintiff's allegations under Labor Code Section 1102.5(a) or (c).
 25 The court notes, however, that there is no allegation that FedEx
 26 had any rule or policy regarding disclosures to government
 27 agencies, nor that Plaintiff attempted or desired to directly make
 28 such a disclosure. Cal. Labor Code § 1102.5(a). As for subsection
 (c), FedEx's assertion that Plaintiff's original Complaint alleged
 that he did not refuse to perform a repair is misplaced, as the
 original Complaint referred to a fuel tank repair, not a Banjo
 Fitting repair. Nevertheless, the original Complaint did not
 allege any refusal to perform a Banjo Fitting repair.